HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:23769 OF 2005

Dated: 08.06.2007

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Between:

1. The Secretary, Ministry of Defence, New Delhi & others.

..Petitioners

And

Col Sri Pal Singh & another

..Respondents.

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HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:23769 OF 2005

ORDER: (per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition has been filed by the petitioners aggrieved by the order, dated 21.04.2004 passed by the A.P. Administrative Tribunal, Hyderabad, in O.A.No.1492 of 2001.

Originally, the respondents herein, who are the applicants, filed O.A.No.1492 of 2001 seeking to declare the order dated 18.1.2001 issued by the 2nd petitioner herein as illegal and arbitrary by holding that they are entitled for fixation of their pay in the pay scale of 10000 – 325 – 15200 with effect from the date of their re employment on 1.10.1997 and 04.9.1997 respectively by granting 40% weightage as per Rule 7 of C.C.S. (RP) Rules, 1997 read with O.M.No:3/12/97-Estt (Pay II) dated 19.,11.1997 with all consequential benefits.

It is the case of the respondents-applicants that they retired as Army officers on 31.5.1995 and 31.12.1994 respectively and were re employed as Executive Engineers in Army with effect from 1.10.1997 and 4.9.1997 in the scale of pay of Rs.3000-4500, the corresponding 5th pay commission scale being Rs.10000-15200. The last pay drawn by them in the said scale of pay was Rs.4800 and Rs.5100 respectively. The pay of the 1st applicant was fixed at Rs.2150/- in the said scale of pay after deducting pensionary benefit of Rs.2348 from the maximum of Rs.4500/- in the said scale of pay. The same was fixed as Rs.2065/- in the case of the 2nd applicant. Even as per the revised pay scales of 5th pay commission, the applicants' pay was fixed in the scale of pay of Rs.10000-325-15200 vide orders dated 29.10.1998. The basic pay of the applicants was fixed at Rs.5965 and Rs.5089 respectively in the said scale of pay. In doing so, 40% weightage of fixation of their pay in the scale of pay of Rs.10000-15200 to which they are entitled to under rule 7 of C.C.S. (RP) Rules, 1997 read with Government O.M. dated 3.12.1997, Estt. (Pay II) Dated

19.11.1997 has not been given to the applicants. In spite of their representations also, their relief has not been considered by the 2nd respondent. Aggrieved by the same, the respondents-applicants filed the present O.A.

The tribunal having observed that the interpretation of the provisions of the O.M. dated 3.12.1997 amounts to discrimination between the same class of employees by granting weightage of 40% to those who are employed as on 1.1.1996 and denying the same to those who are re employed after 1.1.1996 and therefore, denying of 40% weightage while fixing their pay under rule 7 of C.C.S. (RP) Rulexs, 1997 is illegal and arbitrary, allowed the O.A. for the relief as sought for by the applicants. Having aggrieved by the same, the present writ petition is preferred by the petitioners herein.

Heard the learned counsel and perused the order impugned as well as the entire material available on record.

It is the case of the petitioners-respondents-authorities that the applicants having accepted the fixation of pay and having received the arrears as per their fixation of pay in the pay scale of 10,000-15200 (which includes 40% weightage), have filed the present O.A. after a lapse of three years.

The material on record goes to show that on the representation made by the applicants to the 3rd petitioner herein seeking 40% weightage as per the O.M. dated 19.11.1997, the 3rd petitioner sought clarification from the 2nd petitioner and thereby, the 2nd petitioner issued the clarification dated 18.1.2001 to the effect that the memo dated 19.11.1997 under which the applicants are claiming the benefit, is not applicable to the persons-re employed in Government service after retirement. It is also made clear thereunder that as an exception to this rule, the said O.M. dated 19.11.1997 was issued for extension of benefit to the persons who ere re employed as on 1.1.1996 to fix their pay under Rule 7 of C.C.S. (RP) Rules, 1997.

At this stage, it is relevant to go through the provisions of Rule 19 of the Central Civil Services (Fixation of Pay of Re Employed Pensioners) Orders, 1986 which read thus:

"APPLICABILITY OF CCS (REVISED PAY) RULES, 1997 TO RE EMPLOYED PENSIONERS WHOSE PAY IS DEBITABLE TO CIVIL ESTIMATES:

Persons re employed in Government service after retirement have been excluded from the purview of the central Civil Services (Revised Pay) Rules, 1997, vide Rule 2 (2) (g) thereof. The question of extension of the benefit of the revised pay rules to these persons and the procedure to be followed for fixing their pay in the revised scales has been under consideration of the Government. The President, after consultation with the Comptroller and Auditor-General of India in relation to persons serving in the Indian Audit and Accounts Department, is pleased to decide that, in partial modification of Rule 2 (2) (g) of the CCS (RP) rules, 1997, the provisions of those rules shall apply to such persons also who were in re employment on 1st jannuary, 1996 subject to the orders hereinafter contained."

The above rule makes it clear that the provisions of those rules shall be applicable to those who were in re employment on 1st January, 1996.

Now, coming to the facts of the case on hand, the applicants were admittedly appointed on re employment on on 1.10.1997 and 4.9.1997. Therefore, We have no hesitation to hold that the case of the applicants cannot be brought under the purview of Rule 19 of the Central Civil Services (Fixation of Pay of Re Employed Pensioners) Orders, 1986 to claim the benefit under Rule 7 of the Central Civil Services (Revised Pay) Rules, 1997. As a matter of fact, the approach of the applicants before the tribunal after a lapse of 3 years, is not only a belated one but also an effort to make an illusory claim.

But, the tribunal has failed to take into consideration the above rule 19 in adjudicating the matter. Hence, We feel that the order

impugned herein is liable to be set aside.

Accordingly, this writ petition is allowed setting aside the order of the tribunal. No order as to costs.

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Justice T. Meena Kumari

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Justice G. Chandraiah

Date: 8th June, 2007
Nn/Gurc.

HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:23769 OF 2005

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

08/06/2007

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